IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI.APPLICATION NO. 6318 OF 2005
IN
CRI.APPEAL NO. OF 2005

The State of Maharashtra]
(Through the Umbraj Police]
Station, Raigad]..Appellant
(Ori.Complainant)

Vs.

Marutirao Pandurang Shinde]
Age 76 yrs.]
R/o Chaphal, Taluka Patan,]
Dist.Satara]..Respondents
(Ori.Accused)

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Mr.A.S.Gadkari A.P.P. for the State
Mr.Abhaykumar Apte Advocate (appointed) for Respondent.

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CORAM: D.G.DESHPANDE AND SMT.V.K.TAHILRAMANI,JJ.
DATE : APRIL 19,2006

ORAL ORDER (PER SMT.V.K.TAHILRAMANI,J.):

1. Heard the learned A.P.P. for the State and Mr.Apte, the learned advocate for the Respondent-accused.

2. The State has preferred this application for leave to appeal against acquittal of the Respondent-accused under Section 302 of IPC. The Respondent-accused was charged for the offence under Section 302 of IPC for causing death of his

son Vijay. However, the Respondent-accused came to be convicted for the offence under Section 304 of IPC.

3. The prosecution case is that the Respondent had murdered his son Vijay. Vijay was addicted to liquor. Quarrels used to take place between the Respondent and his son Vijay frequently. On many occasions, Vijay had abused family members under the influence of alcohol. Though Vijay was married, he was not doing any work and was not looking after his wife and his parents. On the date of incident, Vijay was found dead with injuries on his head. It is the case of the prosecution that the Respondent had caused said injuries to Vijay and caused his death.

4. As far the evidence is concerned, there is no room for doubt that it was the Respondent alone who caused death of his son Vijay. However, it has also come on record that Vijay son of Respondent was addicted to liquor, though he was married, he was not looking after his wife or his parents. On account of addition of Vijay to liquor, there were frequent quarrels between Respondent and his son.

On many occasions Vijay had also abused family members including the Respondent under the influence of alcohol. From the evidence on record, it is clear that the offence was committed by the Respondent as he was provoked by the misconduct of his son Vijay. Looking to this aspect, we are of the opinion that the case would not fall under Section 302 of IPC and the learned Sessions Judge has rightly convicted the Respondent under Section 304 of IPC.

5. It is well settled that if the view of acquittal could have been reasonably arrived at, then the circumstance that the appellate Court could have taken a different view, would be no ground to interfere. In this connection, there are no dearth of authorities, however, to eschew prolixity, we are referring to only one of them i.e. **1997 (1) Mh.L.J. 770 State of Maharashtra Vs. Balram @ Nam Amarsingh Talwar.** It has been observed in para 12 of the decision in 1997 (1) Mh.L.J. 770 that:-

> . 12. At the very outset, we would like to point out that we are seized of the

matter in an appeal against acquittal. It is well settled that unless appreciation of evidence is clearly unreasonable or the impugned order of acquittal is vitiated by some illegality, this Court does not interfere in an appeal against acquittal. It is equally well settled that if the view of acquittal is a possible view then this Court does not interfere in spite of the fact that it may feel that had it been the trial Court, it may have taken a different view. We are fortified in our view by the decisions of the Apex Court reported in **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and AIR 1987 SC 1083 Tota Singh Vs.State of Punjab.** We also feel that in this connection, it would be pertinent to refer to the decision of the Apex Court reported in **1995(2) SCC 486, State of Punjab Vs. Ajaib Singh,** where in para 7, Their Lorships of the Apex Court observed thus:-

. " We agree that this Court is not precluded or the Court hearing the appeal against acquittal is not prevented from examining and reappreciating the evidence on record. But the duty of a Court hearing the appeal against acquittal in the first instance is to satisfy itself if the view taken by acquitting court exercising appellate jurisdiction was possible view or not. And if the Court comes to conclusion that it was not, it can on reappreciation of evidence reverse the order".

6. In the facts and circumstances of this case, leave to appeal is rejected.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]